

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 JAMES H. HAYES,

Case No.: 2:21-cv-02267-APG-DJA

4 Petitioner

Order

5 v.

6 WILLIAM HUTCHING, et al.,

7 Respondents.

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9 James H. Hayes has submitted a pro se 28 U.S.C. § 2254 petition for a writ of habeas
10 corpus and paid the filing fee. ECF No. 1-1. I have reviewed the petition under Habeas Rule 4
11 and direct that it be served on the respondents.

12 A petition for federal habeas corpus should include all claims for relief of which the
13 petitioner is aware. If the petitioner fails to include such a claim in his petition, he may be
14 forever barred from seeking federal habeas relief upon that claim. *See* 28 U.S.C. §2254(b)
15 (successive petitions). If the petitioner is aware of any claim not included in his petition, he
16 should notify the court of that as soon as possible, perhaps by means of a motion to amend his
17 petition to add the claim.

18 Hayes wrote at the top of his petition “Appointment of Counsel Requested!!” ECF No. 1-
19 1, p. 1.¹ This is insufficient. If Hayes seeks appointment of counsel, he must file a separate
20 motion.

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¹ Due to Hayes’s notation regarding counsel, the petition was docketed again at ECF No. 1-2 as a
motion for counsel. However, no actual motion for appointment of counsel is currently on file.

1 I THEREFORE ORDER the Clerk to detach, file, and electronically SERVE the petition
2 (ECF No. 1-1) on the respondents.

3 I FURTHER ORDER the Clerk to add Aaron D. Ford, Nevada Attorney General, as
4 counsel for the respondents and provide the respondents an electronic copy of all items
5 previously filed in this case by regenerating the Notice of Electronic Filing to the office of the
6 AG only.

7 I FURTHER ORDER the respondents to file a response to the petition, including
8 potentially by motion to dismiss, within **90 days** of service of the petition, with any requests for
9 relief by Hayes by motion otherwise being subject to the normal briefing schedule under the
10 local rules. Any response filed is to comply with the remaining provisions below, which are
11 entered under Habeas Rule 5.

12 I FURTHER ORDER that any procedural defenses raised by the respondents be raised
13 together in a single consolidated motion to dismiss. In other words, I do not wish to address any
14 procedural defenses raised herein either in *seriatum* fashion in multiple successive motions to
15 dismiss or embedded in the answer. Procedural defenses omitted from such motion to dismiss
16 will be subject to potential waiver. The respondents should not file a response that consolidates
17 their procedural defenses with their response on the merits, except under 28 U.S.C. § 2254(b)(2)
18 as to any unexhausted claims clearly lacking merit. If the respondents seek dismissal of
19 unexhausted claims under § 2254(b)(2), they will do so within the single motion to dismiss, and
20 they will direct their argument to the standard for dismissal under § 2254(b)(2) set forth in
21 *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses,
22 including exhaustion, should be included with the merits in an answer. All procedural defenses,
23 including exhaustion, instead must be raised by motion to dismiss.


1 I FURTHER ORDER that, in any answer filed on the merits, the respondents must
2 specifically cite to and address the applicable state court written decision and state court record
3 materials, if any, regarding each claim within the response as to that claim.

4 I FURTHER ORDER that Hayes has **45 days** from service of the answer, motion to
5 dismiss, or other response to file a reply or opposition, with any other requests for relief by the
6 respondents by motion otherwise being subject to the normal briefing schedule under the Local
7 Rules.

8 I FURTHER ORDER that any additional state court record exhibits filed by either Hayes
9 or the respondents be filed with a separate index of exhibits identifying the exhibits by number.
10 The parties will identify filed CM/ECF attachments by the number or numbers of the exhibits in
11 the attachment.

12 I FURTHER ORDER that, at this time, the parties are to send courtesy copies of **any**
13 **responsive pleading or motion and all INDICES OF EXHIBITS ONLY** to the Reno Division
14 of this court. Courtesy copies shall be mailed to the Clerk of Court, 400 S. Virginia St., Reno,
15 NV, 89501, and directed to the attention of "Staff Attorney" on the outside of the mailing
16 address label. **No further courtesy copies are required unless requested by the court.**

17 Dated: February 16, 2022

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19 U.S. District Judge Andrew P. Gordon
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